

NOTICE OF SUSPENSION OF ATTORNEY

Pursuant to Practice Book § 2-54, notice is hereby given that on January 30, 2018 Attorney Arik B. Fetscher, Juris #418442, was ordered suspended from the practice of law by the Hon. Gary White for a period of 100 days, effective January 31, 2018.

The full order of the court can be found in FSTCV17 6033715S *Disciplinary Counsel v. Arik B. Fetscher*.

Notice of Application for Reinstatement to the Bar

On 2/1/18 Maurizio D. Lancia filed in the Superior Court for the Judicial District of Fairfield at Bridgeport in docket number FBT CV12 6027678S an Application for Reinstatement as an Attorney Admitted to the Practice of Law in Connecticut. The Application will be referred to a Standing Committee on Recommendations for Admission to the Bar.

Robert A. Wilock, II
Chief Clerk,
Judicial District of Fairfield at Bridgeport

OFFICE OF STATE ETHICS

Office of State Ethics advisory opinions are published herein pursuant to General Statutes Sections 1-81 (3) and 1-92 (5) and are printed exactly as submitted to the Commission on Official Legal Publications.

Advisory Opinion No. 2018-1, January 25, 2018

Questions Presented: The petitioner asks (1) whether expenditures made by the Connecticut Academy of Science and Engineering (“CASE”) to administer a Fellowship Program and the acceptance of donations to fund the Program trigger lobbyist registration requirements, and (2) whether services provided to the General Assembly by Fellows under the Fellowship Program constitute an impermissible gift.

Brief Answer: We conclude that (1) the expenditures made by CASE to administer a Fellowship Program and the acceptance of donations to fund the Program do not trigger lobbyist registration requirements, and (2) that services provided to the General Assembly by Fellows under the Fellowship Program constitute a permissible gift to the state.

At its December 2017 regular meeting, the Citizen’s Ethics Advisory Board granted the petition for an advisory opinion submitted by Richard H. Strauss, Executive Director of the Connecticut Academy of Science and Engineering. The Board now issues this advisory opinion, which interprets the Code of Ethics for Public Officials¹ (“Ethics Code”), is binding on the Board concerning the person who requested it and who acted in good-faith reliance thereon, and is based on the facts provided by the petitioner.

Facts

The following facts, as set forth by the petitioner, are relevant to this opinion:

The Connecticut Academy of Science and Engineering, Incorporated, a Section 501 (c)(3) non-profit organization (“CASE”), wishes to administer a Fellowship Program (“the “Program”) whereby it will make science and technology experts (each a “Fellow”) available to the Connecticut General Assembly (the “General Assembly”) to help address questions on science and technology that arise in connection with potential legislation. It is anticipated that the Program will be funded, in large part, by donations from business organizations, private charities and individuals. The questions that CASE has for the Office of State Ethics are (i) would CASE’s actions, either in making expenditures to administer the Program or in accepting donations to fund the Program, trigger lobbyist registration requirements and (ii) would the services provided by the Fellows to the General Assembly constitute impermissible gifts?

¹Chapter 10, part I, of the General Statutes.

The General Assembly founded CASE pursuant to Special Act No. 76-53, enacted May 28, 1976, “to foster science and engineering, to promote the application of science and engineering to human health and welfare, and to study and report upon any subject within its competence when appropriate. In particular, the corporation shall . . . provide guidance to the people and the government of the state of Connecticut, upon request, in the application of science and engineering to the economic and social welfare”. CASE is a membership organization; membership is considered honorific. To further its goals, CASE regularly (i) assembles research teams and study committees consisting of science and engineering experts, including CASE members, (ii) prepares reports and studies of a scientific and technological nature, (iii) provides recommendations based on an analysis of its reports and studies and (iv) undertakes various educational outreach initiatives. While doing so, CASE remains non-partisan.

The California Council on Science and Technology, another Section 501 (c)(3) organization established for the same general purpose as CASE, has awarded CASE a planning grant for the establishment of the Program and the General Assembly’s leadership has approved the planning process. The Director of the Office of Legislative Research (the “OLR”), an ex officio member of CASE’s Fellowship Policy Advisory Committee, serves as the General Assembly’s project liaison to the Program.

CASE leadership is aiming to place the first Fellow(s) at the General Assembly for either the 2018 or 2019 legislative session. At this time, CASE is expecting that one, but not more than two Fellows would be placed. Each of the Fellows will (i) hold either a doctoral level degree in the sciences or in engineering or a masters level degree with at least three (3) years of professional experience, (ii) serve as a Fellow for a predetermined amount of time (currently anticipated to be one year), (iii) be assigned to the OLR or will be placed by the OLR to serve legislative committees and/or individual legislators within the General Assembly and (iv) advise his or her audience on matters of science and technology pertinent to the State of Connecticut and beyond. Potential Fellows may have specific group affiliations (e.g., professional societies/organizations such as the American Chemical Society, American Academy of Environmental Engineers, etc.) and/or specialized education, or their research expertise may concern a particular theme. Nonetheless, it is anticipated that there will be a Memorandum of Understanding between CASE and the General Assembly providing that the OLR and/or the Office of Legislative Management (the “OLM”), and not outside sources, will have sole authority to (1) make the final selection of Fellows from a list of finalists prepared by a CASE committee, (2) determine which issues the Fellows will address and (3) determine utilization of the Fellows’ services.

CASE will require fundraising to operate the Program. CASE leadership anticipates that it will receive a significant inflow of funds pursuant to donations from individuals, corporations and/or private charities. Donations will be made to CASE, not individual Fellows, and will, in turn, be used for administration of the Program. As aforementioned, donors will have no ability to select Fellows, the subjects as to which they will

advise or the advice they will give, the offices or the committees of the General Assembly with whom they will be placed or the members of the General Assembly whom they will serve.

[Although the Petition for Advisory Opinion contains two general questions, they stem from the following seven specific questions presented by the Petitioner.]

QUESTIONS PRESENTED

1. Would advice given by Fellows to members or committees of the General Assembly on science and technology matters be deemed to be “for the purpose of influencing any legislative . . . action” under the definition of “Lobbying” in [General Statutes] § 1-91?
2. In the case of any ambiguity regarding the answer to Question # 1, would the execution of an agreement between CASE and the General Assembly specifying that each Fellow’s services are for no purpose other than to advise on science and technology be sufficient to establish that the Fellow’s services are not “Lobbying”?
3. If an individual, corporation or other organization donates more than \$3,000 in any calendar year to the Program, would that individual, corporation or other organization be deemed to have “solicit[ed] others to communicate with any official or his staff in the legislative . . . branch . . . for the purpose of influencing any legislative . . . action” under the definition of “Lobbying” in [General Statutes] § 1-91?
4. In the case of any ambiguity regarding the answer to Question # 3, would it be sufficient to establish that a donor did not solicit others to influence legislative action if the donor executed an acknowledgment in favor of CASE stating that (i) its donations are for no purpose other than to help fund administration of the Program and (ii) the donor will have no ability to select Fellows, the subjects as to which they will advise or the advice they will give, the offices or the committees of the General Assembly with whom they will be placed or the members of the General Assembly whom they will serve?
5. Would each Fellow’s services pursuant to the Program be exempted from the definition of “Gift” in [General Statutes] § 1-79 pursuant to clause (E) of such definition (i.e., “Goods or services . . . that facilitate state or quasi-public agency action or functions”)?
6. If each Fellow’s services pursuant to the Program are not exempted from the definition of “Gift” in [General Statutes] § 1-79, do they constitute impermissible benefits to a public official provided “on any understanding that the vote, official action or judgment of the public or state employee . . . would be or had been influenced thereby” in violation of [General Statutes] § 1-84 (g)?
7. If CASE implemented with Connecticut’s executive branch of government a program in form and substance substantially similar to the Program, whereby science and technology experts were made available to executive officials, would such program (i) implicate the lobbying laws of [General Statutes] § 1-91 differently as compared to the Program and (ii) be recognized as a permissible “gift to the state” akin to the “Loaned Executive Program” discussed in Advisory Opinion No. 91-1?

Analysis

We proceed to answer Petitioner's seven questions as presented.

1. Under General Statutes § 1-91 (11), the term "lobbying" means "communicating directly or soliciting others to communicate with any official or his staff in the legislative or executive branch of government or in a quasi-public agency, *for the purpose of influencing any legislative or administrative action.*"² In Advisory Opinion No. 78-13, the former State Ethics Commission ("former Commission") explained that "[w]hat determines whether [an entity] is lobbying is its intent in furnishing the information. If it is for the purpose of influencing legislative action, it is lobbying. Conversely, if it is not for the purpose of influencing legislative action, it is not lobbying."³ It went on to state that, although the entity "is the best judge of its intent in providing information,"

intent can be manifested objectively in a number of ways. For example, the content of the information will normally give some indication of intent. Some information is patently neutral. Other might create an impression which, if the activity is not reported as lobbying, could require an explanation by the [entity] as to why the furnishing of it should not be held to have been done for the purpose of influencing legislative action. How provision of the information was initiated may be meaningful.⁴

In this case, the manner in which the Fellows will provide advice suggests that they are not engaging in "lobbying." Although privately funded, according to the proposed Program, Fellows will only provide their expertise in the area of science and technology for the benefit of the state and at the direction of the state by being assigned to the OLR. It is anticipated that there will be a Memorandum of Understanding between CASE, the entity that administers the Program, and the General Assembly, providing that the non-partisan OLR and/or OLM offices will have sole authority to (1) make the final selection of Fellows from a list of finalists prepared by a CASE committee, (2) determine which issues the Fellows will address, and (3) determine how to use Fellows' services.

Moreover, the proposed Program and work to be performed by Fellows is akin to the "Loaned Executive Program," discussed in Advisory Opinion No. 91-1. In that opinion, the former Commission recognized the "Loaned Executive Program" as a permissible "gift to the state" under the Ethics Code, whereby private entities would donate the time and talent of certain executive personnel to serve as consultants, managers, and assistants to the State. Such executives were compensated by their private employers and were not considered state employees.⁵ The fact that the former Commission did not address the issue of "lobbying" suggests that it did not believe the proposed activity would constitute "lobbying."

²(Emphasis added.)

³Advisory Opinion No. 78-13.

⁴Id.

⁵Advisory Opinion No. 91-1.

Based on those facts, we conclude that the advice to be provided by Fellows to members or committees of the General Assembly on science and technology will not be deemed “lobbying,” as defined under § 1-91 (11).

Bolstering our conclusion is the fact that the OLR Director is an ex-officio member of CASE’s Fellowship Policy Advisory Committee and serves as the General Assembly’s project liaison to the Program; and that the General Assembly founded CASE, pursuant to Special Act No. 76-53, to provide, among other things, “guidance to the people and the government of the state of Connecticut, upon request, in the application of science and engineering to the economic and social welfare.”

2. In light of the answer to Question No. 1, the execution of an agreement between CASE and the General Assembly specifying that each Fellow’s services are for no purpose other than to advise on science and technology is not required. Nonetheless, such an agreement is recommended as it could provide a framework under which Fellows will operate when faced with any conflicts of interest and note that their services are being donated by CASE for the benefit of the State. The concern over conflicts of interest was raised specifically in Advisory Opinion No. 91-1 regarding the aforementioned “Loaned Executive Program,” and the former Commission recommended that such conflicts be addressed by the state prior to the commencement of the program. Here, an agreement between CASE and the General Assembly could, for example, provide for specific procedures to be followed by Fellows when faced with a conflicts of interest, should such conflicts arise.
3. Because, as noted in the answer to Question No. 1, the work of Fellows for the benefit of the General Assembly will not be deemed “lobbying,” a monetary donation of any value made by individuals, corporations or other organizations in support of the Program, does not meet the definition of “lobbying” under the Ethics Code. Even if the Program included activity deemed to be “lobbying” (which in this case, it does not, as noted above), donations to the Program would not be considered “lobbying” under the Ethics Code and would not require lobbyist registration if valued \$3,000 or more. Rather, as noted in General Statutes § 1-95 (a) (3), donors who donate \$3,000 or more to the lobbying efforts of another person, must be identified on the person’s lobbyist registration if such person is formed primarily for the purpose of lobbying.
4. In light of the answer to question No. 3, there is no need to require the proposed execution of a donor acknowledgment.
5. Under the Ethics Code, the “gift-to-the-state” provision exempts from the term “gift” the following: “Goods or services (i) that are provided to a state agency or quasi -public agency (I) for use on state or quasi-public agency property, or (II) that support an event or the participation by a public official or state employee at an event, and (ii) that facilitate state or quasi-public agency action or functions.”⁶ As noted in answer to Question No. 1, the Program is similar to

⁶General Statutes § 1-79 (5) (E).

the previously sanctioned “Loaned Executive Program,” which was recognized as a permissible “gift to the state.”⁷ Here, the Program will provide expert services on science and technology to the state to be utilized by members of the General Assembly in their legislative work. As such, it will clearly facilitate state action or functions, as required under the definition of “gift to the state”. Therefore, each Fellow’s services will be considered a permissible “gift to the state” under the Ethics Code.

6. See answer to Question No. 5.
7. If CASE implements with the executive branch of Connecticut state government a program in form and substance substantially similar to the Program proposed with the General Assembly, whereby science and technology experts are made available to executive officials, such program would not be treated differently under state lobbying laws. Further, the executive branch program would similarly be recognized as a permissible “gift to the state” akin to the “Loaned Executive Program” discussed in Advisory Opinion No. 91-1.

Conclusion

Based on the foregoing, we conclude that (1) the expenditures made by CASE to administer a Fellowship Program and the acceptance of donations to fund the Program do not trigger lobbyist registration, and (2) services provided to the General Assembly by Fellows under the Fellowship Program constitute a permissible gift to the state under the Ethics Code.

By order of the Board,

Dated 1/25/18

Kevin P. Johnston Chairperson /**Vice Chairperson**

⁷Advisory Opinion No. 91-1.